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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL RESENDEZ,

Defendant and Appellant.

E049120

(Super.Ct.No. FVA900170)

OPINION

APPEAL from the Superior Court of San Bernardino County. Dwight W. Moore, Judge. Affirmed with directions.

Neil Auwarter, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Barry Carlton and Sharon L. Rhodes, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Samuel Resendez pled guilty to possession of a deadly weapon, to wit, a sap (Pen. Code, § 12020, subd. (a)(1)),

and admitted that he had suffered a prior strike conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). In exchange, the remaining allegations were dismissed and defendant was sentenced to the stipulated sentence of four years in state prison. The trial court also made a finding that a motor vehicle was involved in the commission of the offense pursuant to Vehicle Code¹ section 13350 and, accordingly, ordered defendant's driving privileges revoked. Defendant's sole contention on appeal is that the trial court erred in revoking his driver's license under Vehicle Code section 13350. We reject this contention and affirm the judgment.

I

FACTUAL BACKGROUND²

On January 22, 2009, Fontana Police Department officers received information that defendant, a North Side Colton gang member, was possibly supplying heroin to South Fontana gang members. The officers also had information that defendant was the registered owner of a maroon Oldsmobile Bravada, with California license plates, and that he was residing with his girlfriend at an address in Rialto. The officers further discovered that defendant had an active warrant for violation of probation in a prior case.

On January 24, 2009, the officers placed defendant's girlfriend's home under surveillance. At approximately 9:42 p.m., defendant arrived at the residence in the

¹ All future statutory references are to the Vehicle Code unless otherwise stated.

² The factual background is taken from the probation and police reports.

maroon Oldsmobile Bravada.³ Defendant was detained without incident. During a valid search of his vehicle, the officers found a brown leather sap in the middle console area between the front driver's seat and the passenger seat.

Defendant was subsequently transported to the police station. Prior to entering the facility, defendant was informed that if he brought anything illegal into the facility he would be charged with an additional felony. Defendant admitted he had a bindle of heroin in his front right pocket. A search of the pocket revealed a small white bindle containing black tar heroin.

II

DISCUSSION

A. *Revocation of Driver's License*

Defendant contends the trial court improperly suspended his driver's license under section 13350 because the evidence failed to show a nexus between the offense and the use of a vehicle.

Section 13350 requires the Department of Motor Vehicles (DMV) to revoke the privilege of a person to drive a motor vehicle upon receipt of a duly certified abstract of the record of a court showing that the person has been convicted of a felony in the commission of which a motor vehicle is used. (§ 13350, subd. (a)(2).) In the context of

³ It appears defendant's girlfriend was driving defendant's vehicle, and defendant was a passenger in the vehicle. The police and probation reports are unclear on this point. However, at the time of sentencing, when the trial court inquired whether defendant was simply riding as a passenger, the People did not dispute that point but merely claimed that it was defendant's vehicle that was pulled over.

section 13350, the Legislature intended the term “‘used’ in the commission of a felony” to mean that there was a nexus between the offense and the vehicle, not merely that a vehicle was incidental to the crime. Use of a vehicle to travel to and from the crime scene, and as a place from which to commit the crime has been held to satisfy the legislative intent. (*People v. Gimenez* (1995) 36 Cal.App.4th 1233, 1236 [Fourth Dist., Div. Two].)

Essentially citing the same cases, the parties debate whether there was a “sufficiently strong nexus” between the use of defendant’s car and the crime of possession of a deadly weapon, or whether his use of the car was merely “incidental” to the crime. In *In re Gaspar D.* (1994) 22 Cal.App.4th 166, the minor defendant hid a stolen item in the trunk of his car. (*Id.* at pp. 167-168.) In *People v. Paulsen* (1989) 217 Cal.App.3d 1420 [Fourth Dist., Div. Two], the defendant used her car to transport merchandise paid for with fraudulent checks. (*Id.* at pp. 1421-1423.) In both of those cases, the revocation of the defendant’s driver’s license was upheld on appeal. The *Gaspar D.* court explained, “use of the vehicle to conceal the fruits of the crime in the trunk” and as transportation to and from the crime scene constituted a “sufficiently strong nexus between the vehicle use and the crime.” (*In re Gaspar D.*, at p. 170.) The opposite result occurred in *People v. Poindexter* (1989) 210 Cal.App.3d 803 [Fourth Dist., Div. Two], where the car was used only to transport the defendant to and from the crime scene. (*Id.* at pp. 807-808.)

While the decision is not binding on us, we also observe that the Washington Court of Appeals in *State v. Batten* (Wash. 2000) 140 Wn.2d 362, 997 P.2d 350,

considered whether a driver's license was properly revoked under a statute similar to section 13350. There, the court analyzed *In re Gaspar D.*, *supra*, 22 Cal.App.4th 166, and *People v. Poindexter*, *supra*, 210 Cal.App.3d 803, and concluded there was a sufficient nexus between the defendant's possession of a firearm and methamphetamine and the use of the vehicle to justify revocation of his license. (*State v. Batten*, at pp. 365-366.)

Following the logic of these cases, we must conclude that the trial court properly revoked defendant's license. He used his vehicle to conceal (as well as transport) the sap, a deadly weapon. Thus, defendant "used" the car to commit the offense and there was a sufficient nexus between it and the crime.

B. *Correction of Abstract of Judgment*

The People also note that the abstract of judgment does not indicate that the trial court found defendant used a motor vehicle in the commission of the offense. They, therefore, request this court amend the abstract of judgment to reflect the trial court's intended sentence. Because receipt of an abstract of judgment triggers the DMV's duty under section 13350, subdivision (a), and this court has the inherent power to correct errors to reflect the oral pronouncement of judgment, we shall direct the trial court to amend the abstract of judgment accordingly. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-187.)

III

DISPOSITION

The superior court clerk is directed to prepare an amended abstract of judgment to reflect the trial court's findings under Vehicle Code section 13350 and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. (Pen. Code, §§ 1213, 1216.) In all other respects, the judgment is affirmed.

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RICHLI
J.

We concur:

RAMIREZ
P. J.

KING
J.